



**U.S. Department of Justice**  
**Consumer Protection Branch**

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**Ann Entwistle**

Telephone: (202) 305-3630  
Fax: (202) 514-8742  
Ann.F.Entwistle@usdoj.gov

**Overnight Delivery Address**

450 5<sup>th</sup> St., N.W., Room 6400  
Washington, D.C. 20001

**Mailing Address**

P.O. Box 386  
Washington, D.C. 20044

June 27, 2025

By ECF and Email

Honorable Nusrat Choudhury  
United States District Court, CR 1040  
Eastern District of New York  
100 Federal Plaza  
Central Islip, NY 11722

Re: *United States v. Phillip Priolo*  
Case No. 21-cr-566-NJC

Dear Judge Choudhury:

Counsel for the United States writes to provide additional authority in opposition to Defendant Priolo's oral motion for judgment of acquittal under Fed. R. Crim. P. 29.<sup>1</sup>

On June 2, 2025, the Second Circuit affirmed the conviction at trial of Defendant Priolo's co-conspirators Sean Novis and Gary Denkberg, including their conviction on two counts of aiding and abetting Defendant Priolo's mail fraud scheme. *United States v. Denkberg*, No. 23-6877, 2025 WL 1553619 (2d Cir. June 2, 2025).

The Second Circuit's holding is squarely applicable to Defendant Priolo's challenge to the sufficiency of the government's evidence at trial in this case. The Second Circuit held that the government had presented "overwhelming evidence" of fraudulent intent based on: the content of the prize notices themselves; testimony about the victims' understanding that the prize notices entitled them to large cash prizes; evidence of the repeated targeting of victims once they made an initial payment; and the defendants' receipt of complaints. *Id.* at \*5.

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<sup>1</sup> On March 17, 2025, at the close of all evidence at trial, counsel for Defendant Priolo made an oral motion for judgment of acquittal under Rule 29. (Tr. 884-885.) The government responded orally in opposition to that motion. (Tr. 885-887). The Court reserved ruling on the motion. (Tr. 887.) Following the jury's verdict, counsel for Defendant Priolo stated that he had "no plans on making a post-trial motion." (Tr. 1126.) Unless Defendant Priolo abandons his oral motion for judgment of acquittal, it is the government's understanding that the motion is still pending.

We thank the Court for its consideration.

Respectfully submitted,

/s/ Ann F. Entwistle

ANN F. ENTWISTLE

CHARLES B. DUNN

JASON FELDMAN

Trial Attorneys

Consumer Protection Branch

U.S. Department of Justice

(202) 305-3630

Ann.F.Entwistle@usdoj.gov

cc: Michael T. Jaccarino via email and ECF  
Arthur L. Aidala via email and ECF